



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: National Medical Staffing, Inc.

File: B-270531

Date: December 26, 1995

DECISION

National Medical Staffing, Inc. protests the award of a contract to N.R. Simmons Distributing by the Department of the Air Force under request for proposals (RFP) No. F04699-95-R-0218 for a base commuter coordinator for McClellan Air Force Base, California. National essentially contends that the Air Force's request for best and final offers (BAFO) unduly restricted competition by requiring the proposed personnel to have completed the training courses specified by the RFP prior to the November 1, 1995, commencement date for contract performance, even though these training courses turned out to be unavailable prior to that time, and that the rejection of its proposal for its failure to comply with these provisions was therefore improper.

We dismiss the protest as untimely.

Protests of improprieties subsequently incorporated into a solicitation must be raised prior to the next closing date for receipt of proposals following the incorporation. Bid Protest Regulation § 21.2(a)(1), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(1)); Innovative Training Sys., B-251225.3, Oct. 19, 1993, 93-2 CPD ¶ 232 (note 2). Thus, a protest against the solicitation terms incorporated in a BAFO request must be filed prior to the closing date for BAFOs. Select, Inc., B-246167, Oct. 24, 1991, 91-2 CPD ¶ 372.

On October 2, 1995, the Air Force requested BAFOs be submitted by October 11, and stated that contract performance would commence November 1. The RFP specified that the training courses were required to be completed prior to contract performance. Prior to submitting its timely BAFO, National informed the Air Force that it was having difficulty obtaining the required training courses for its proposed personnel prior to the commencement date for contract performance. However, National did not protest this requirement prior to the BAFO due date, and submitted its BAFO based on the assumption that the agency might relax or waive these requirements. National's suggested alternatives to the required training were found unacceptable by the Air Force and National only protested that the requirement that courses be completed by the date of contract commencement, was unduly restrictive on November 14, after it learned of the rejection of its proposal and the

award to Simmons. Under the circumstances, National's protest is untimely. See HLJ Management Group, Inc., B-225843.3, Oct. 20, 1988, 88-2 CPD ¶ 375.

The protest is dismissed.

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